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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,311	09/30/2003	Frank G. Gates	42P16521	8182

8791 7590 06/11/2007
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EXAMINER

RAMPURIA, SATISH

ART UNIT	PAPER NUMBER
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2191

MAIL DATE	DELIVERY MODE
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06/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/676,311	Applicant(s) GATES ET AL.	
	Examiner Satish S. Rampuria	Art Unit 2191	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 3-10, 16-26, 28-41, 43-47, 49, 50 and 53.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is being provided in the attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


WEI ZHEN
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE:

The rejection under 35 U.S.C. §101 to claims 41, 45-47, and 53 is withdrawn in view of Applicant's amendment.

In response to Applicants argument that claims 32-40 are statutory since claims recites elements that ultimately produce faster executing machine code. Thus, the claimed elements are capable of producing a useful, concrete and tangible result. Claim 32-40 are apparatus claims of functional descriptive material, however, the recited components of the claims can reasonably be interpreted as computer program modules/software per se. There are no indications or suggestions in the specification or claims that would associate the recited software components in the claims with hardware elements of the electronic device (Applicant's Specification paragraph [0016]-[0017]), i.e., a processor or a memory. The components, a front end code generator, the profiler, a back end code generator are descriptions or expressions of the programs are not physical "things". They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized. Therefore the rejection is proper and maintained herein.

In response to Applicants argument that Goebel fails to disclose executing the IR based on external execution input. Rather, Goebel discloses that the IR is optimized by optimizer 305 based on profile information 317, which is generated during execution of a binary executable. first of all the claim has been amended, it would require further search and further, Goebel is capable of re-optimizing a binary executable. Re-optimizing compiler process source information by a compiler front-end segment that generates an intermediate representation of the source information. This intermediate representation is optimized by an intermediate representation optimizer segment that performs optimizations on the intermediate representation. The optimized intermediate representation is then processed by a code generator segment that generates a binary module containing opcodes. A linker application converts the binary module into a binary executable. The intermediate representation optimizer segment and the code generator segment also propagate portions of their internally collected symbol and alias information as annotations to the resulting binary module (and corresponding binary executable). This annotation information is used by a binary re-optimization process (subsequently described with respect to FIG. 4) to approximate the compiler's internal state during the compilation of the source code used to create the binary executable (col. 6, lines 22-43). Goebel does disclose the cited limitations. Therefore, the rejection is proper and maintained herein.

In response to Applicants argument that Goebel fails to disclose a front-end code generator coupled that produces second intermediate code based directly on the source code and a second data file. Gooble specifically discloses front end code generator which generates intermediate code based on the source code as cited by the examiner in, See FIG. 3, element 303. Therefore, the rejection is proper and maintained herein.